

**WILLIAMSBURG
BOARD OF ZONING APPEALS
MINUTES**

March 6, 2007

The regular monthly meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, March 6, 2007 at 4:00 p.m. in the Williamsburg Municipal Building, 401 Lafayette Street.

CALL TO ORDER and ATTENDANCE

Vice-Chairman Lamson called the meeting to order. Present in addition to Mr. Lamson were Board members Goddin, Carr and Knudson. Board member White was absent. Staff members present were Zoning Administrator Rhodes and Secretary Scott.

OPEN FORUM

Vice-Chairman Lamson opened the Open Forum portion of the meeting for anyone present to address the Board on any subject other than what is on the agenda.

There being no comment the Open Forum was closed.

PUBLIC HEARINGS

BZA #07-001: Request of Virginia Payne and Chris Crone for a variance from Section 21-217(2) of the Zoning Ordinance to construct an attached garage five feet from the side property line instead of the required seven and one-half feet. The property is located at 308 South Boundary Street, Williamsburg Tax Map Number 495-17-00-002A,3A and is zoned Multifamily Dwelling District RM-2. Approved.

Vice-Chairman Lamson introduced the request for a variance and called for a roll call vote of Board members' confirmation of the site visit.

Confirmation of site visit:

Aye: Knudson, Carr, Goddin, Lamson

Nay: None

Absent: White

Mr. Lamson invited the applicant to comment on the request for a variance.

Virginia Payne and Chris Crone, applicants, and Jeff Barra, architect for the project, were present to respond to questions and comments. Mr. Barra noted that Ms. Payne and Mr. Crone will be living in the renovated house in which her mother previously lived, and anticipate caring for older parents and maybe even a grandparent. They would like to have the attached garage primarily to allow direct access from the garage into the house.

Zoning Administrator Rhodes, said City records indicate the dwelling was constructed in 1932 and the City adopted its first Zoning Ordinance in 1947. In June of 2006 the applicants received a special exception (BZA #06-006) from the Board of Zoning Appeals to construct an addition along the southern property line. The applicants note that due to a discrepancy in the surveys of the property, the proposed addition (garage) that was approved by the Architectural Review Board does not meet the required setbacks from the northern property line. Mr. Barra said the design of the garage, with a "drive-through", would permit access to the detached garage in the rear yard. The applicants state that if the width of the attached garage was reduced they would not be able to access the detached garage.

The applicants would like to construct the garage off the right side of the house, however, due to the alignment of the house, the back corner of the proposed garage would be approximately 5.4 feet from the side property line instead of the required 7½ feet. Mr. Barra noted that the width of the garage is necessary to provide an overhead door at the rear to provide access to the rear yard. He also noted that the variance would be for the attached garage only.

Vice-Chairman Lamson asked for questions from the Board.

Mr. Goddin asked why it would be a hardship not to have a garage in an area where most of the neighbors do not have garages. Mr. Barra reiterated the anticipated care of family members and the need for direct access to the house from the garage.

Mr. Carr stated that one reason for the width of the garage is for the proposed elevator steps, and asked if it can be reconfigured. Mr. Barra said the overhead door requires the proposed width. Mr. Barra noted that the "jog" of the setback is part of what determines the garage placement, as well as needed room for the lift and stairs. He added that the setbacks were applied after the original home was constructed, and the siting of the house would be considered a part of the hardship.

In response to Mr. Lamson's query, Mr. Crone said there are no family members currently in their care and the garage in the rear will be replaced.

Vice-Chairman Lamson opened the public hearing.

There being no comment the public hearing was closed.

Mr. Carr stated that the request is for a variance of approximately 2.5 feet and reviewing the list of previous similar cases, this request is within the range of past approvals and he is inclined to support it.

Mrs. Knudson noted that the hardship is caused by the City in a way because of the change in setbacks after the house was constructed. She said it is an older house, will

be owner-occupied and the renovation will improve the appearance. In addition, the discrepancies in surveys over the years were no fault of the owners.

Mr. Goddin expressed concern over how the survey discrepancies arise and Mr. Rhodes responded that the City does not provide property surveys and owners' plans are made in good faith based on the survey done by a private surveying company.

Mr. Goddin said he is still grappling very much with the hardship issue and does not agree that not having a garage can be considered a hardship. Mrs. Knudson responded that the hardship has to do with inaccurate data that was provided to the owners. Mr. Carr repeated his conviction that additions to existing projects should be viewed a bit differently than brand new construction projects and that there is a hardship demonstrated in this case. He added that reviewing past approvals of similar requests is very helpful. Mr. Goddin expressed that merely looking at past decisions is not much help unless the property and decision is taken on a case-by-case basis.

Vice-Chairman Lamson directed that there are three questions pertaining to variances the Board needs to consider:

1. Whether or not there exists sufficient hardship to reduce the seven and one-half foot side yard setback for the addition. The Zoning Ordinance allows the Board to consider "exceptional narrowness, shallowness, or shape of a specific piece of property... or...exceptional topographic conditions or other extraordinary or exceptional situation or conditions..."
2. Is the hardship shared generally by other properties in the same zoning district and the same vicinity?
3. Will the authorization of such variance be of substantial detriment to adjacent property and will the character of the district be changed by the granting of the variance?

Mr. Lamson added that the issue of whether needing a garage in a neighborhood where few are present, is analogous to the need for outdoor dining. In previous times providing an outdoor dining area was not considered necessary, but not having the outdoor seating in today's marketplace, constitutes a "hardship". Additionally, Mr. Lamson noted that the Architectural Review Board does not think the garage would be a detriment to adjacent property since the Architectural Review Board approved the plans. He asked for the wishes of the Board.

Mrs. Knudson moved that the variance be approved. Mr. Carr seconded the motion which carried by roll call vote of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson

Nay: None

Absent: White

Mr. Carr asked that it be noted for the record that he was not citing previous cases in a vacuum; the requests reviewed by this Board in the last six years range in variances from 2.3 feet to 8 feet. He said the review of previous cases gives a measure of comfort and the Board is not just looking at the information provided without consideration of the circumstances involved.

BZA #07-002: Request of Lee Conder for a variance from Section 21-167(2) of the Zoning Ordinance to construct an attached carport five feet from the side property line instead of the required ten feet. The property is located at 512 Burbank Street, Williamsburg Tax Map Number 435-07-00-053 and is zoned Single-Family Dwelling District RS-2. Tabled.

Vice-Chairman Lamson introduced the request for a variance and called for a roll call vote of Board members' confirmation of the site visit.

Confirmation of site visit:

Aye: Knudson, Carr, Goddin, Lamson
Nay: None
Absent: White

Mr. Lamson invited the applicant to comment on the request for a variance.

Lee Condor, owner/applicant, said that because of Code restrictions which limit the size of detached accessory buildings, he would be able to build only a one-car detached garage. Because he has two expensive vehicles he needs to protect, one being a classic that he is restoring, he would need to build an attached garage in order to get adequate space. Zoning regulations do not allow a garage to be located in front of a residence, but due to the topography of the site, the cost of the structure in any location on the property other than in front of the residence would drastically increase its cost.

Mr. Carr said he is confused about exactly what the applicant is proposing; usually an applicant comes to the Board with something actually demonstrating the request and the associated hardship. Mr. Lamson agreed that more detail needs to be provided, i.e. regarding the fire hydrant, gas tank and HVAC equipment. Mrs. Knudson also agreed and added that it is clearly the desire of the Board to wait for more information from the applicant. Zoning Administrator Rhodes confirmed that if the case is tabled and the applicant returns with a more definitive plan, as long as the same setback variance is requested, there will be no need to submit a new application. Mr. Condor said he will return with more details.

Vice-Chairman Lamson opened the public hearing.

There being no comment the public hearing was closed and Mr. Lamson asked for the wishes of the Board.

Mr. Carr moved that the case be tabled to give the applicant time to come up with a plan with more specificity. Mr. Goddin seconded the motion which carried by roll call vote of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson
Nay: None
Absent: White

BZA #07-003: Request of CFI Westgate for a variance from Section 21-357(1) of the Zoning Ordinance to construct a timeshare facility two feet from the right-of-way instead of the required fifteen feet. The property is located at 1601 Mount Vernon Avenue, Williamsburg Tax Map Number 403-0A-00-009 and is zoned General Business District B-3. Denied.

Vice-Chairman Lamson introduced the request for a variance and called for a roll call vote of Board members' confirmation of the site visit.

Confirmation of site visit:

Aye: Knudson, Carr, Goddin, Lamson
Nay: None
Absent: White

Mr. Lamson invited the applicant to comment on the request for a variance.

Tom Tingle and Scott Van Voorhees with Guernsey Tingle Architects, 4350 New Town Avenue, were representing the applicant, Central Florida Investment Group (CFI) & Westgate Resorts. Mr. Tingle stated that several years ago his client converted the old Heritage Inn to Westgate Resort. He said the owners plan to place a four story, 100,000 square foot residential time-share facility on the property and would like to keep its relationship to the street the same as the existing adjacent facility. In order to do this, because the adjacent structure is two feet from its property line, they are requesting approval of the variance. Mr. Tingle said another reason for the variance request is to minimize the encroachment of the parking required for this facility on the wooded ravine located on the back of the lot. He added that the owner would like to keep most of the natural vegetation and mature trees intact along the existing tree line of the ravine and minimize the disturbance to the ecosystem due to the construction. He concluded his presentation by saying without the variance they will have to run into the ravine and wood line.

Mr. Carr noted the high threshold set by the courts for variance approval and asked Mr. Tingle what the hardship is in this case. Mr. Tingle said the hardship is the potential detrimental impact on the slope, trees and ravine as well as the inconsistent streetscape if the setback is not in line with the existing structure. Mr. Carr suggested that the streetscape could be made more appealing with the addition of grass, trees and

shrubby. He added that if the ravine is adversely impacted, a smaller footprint may be in order.

To Mr. Goddin's comment about the massiveness of the building, Mr. Tingle responded the proposed offsets on the walls would result in the needed break in the mass.

Mr. Lamson stated that he does not see that a hardship has been demonstrated and that the property would be enhanced with a smaller footprint. He noted the three issues under consideration today:

1. Whether or not there exists sufficient hardship to reduce the front yard setback from fifteen feet to two feet for the building. The Zoning Ordinance allows the Board to consider "exceptional narrowness, shallowness, or shape of a specific piece of property... or...exceptional topographic conditions or other extraordinary or exceptional situation or conditions..."
2. Is the hardship shared generally by other properties in the same zoning district and the same vicinity?
3. Will the authorization of such variance be of substantial detriment to adjacent property and will the character of the district be changed by the granting of the variance?

Vice-Chairman Lamson opened the public hearing.

There being no comment the public hearing was closed and Mr. Lamson asked for the wishes of the Board.

Mrs. Knudson stated that she failed to see a hardship. This is a large, prominent piece of property and if approved the Board would be derelict in their duty.

Mr. Carr agreed with Mrs. Knudson adding that the Applicant has made this a "self-inflicted hardship" because the footprint can be reduced.

Mr. Goddin also agreed with Mrs. Knudson's comments and added that regarding the third question noted above, he is concerned with the impact on the adjacent property, especially the folks at the end of the street. His concern is that with the proposed project a feeling of being in a corridor would be created.

Mrs. Knudson moved that the proposed variance be denied.

Mr. Goddin seconded the motion which carried by roll call of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson

Nay: None

Absent: White

OLD BUSINESS

Election of 2007 Officers

Because there were three of the five members of the Board present at the last meeting, the election of officers for 2007 was tabled until today's meeting. Mr. Lamson noted that at the last meeting the consensus of the Board was to elect officers for two year terms. Mr. Goddin said Mr. Lamson has done a marvelous job today serving in the Chairman's absence.

Knowing that Mrs. White has agreed to serve again if elected, Mrs. Knudson nominated the same slate of officers who are currently serving. Mrs. White for Chairman, Mr. Lamson for Vice-Chairman and Mr. Carr for Secretary. Mr. Goddin seconded the nominations which carried by roll call vote of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson
Nay: None
Absent: White

Review of New BZA Application

Zoning Administrator Rhodes presented the revised BZA application with the changes requested by the Board incorporated. One of the changes requested by the Board was removal of the clause that a survey must be required at the time of submittal. The new wording requires either a survey or a detailed sketch. Especially after hearing of the problems with differing surveys involved in today's case BZA #07-001, Mr. Goddin expressed concern about removing the requirement for a survey. Mr. Rhodes stated that the applicant is now required to provide a foundation survey for new structures.

The Board asked that Mr. Rhodes add a place on each page of the application for the applicant's initials and have the required items in a bullet format for ease in locating the information. The Board approved the revised application by consensus.

NEW BUSINESS

Minutes from January 2, 2007 meeting

Mrs. Knudson moved that the minutes of the January 2, 2007 meeting be approved as submitted. Mr. Carr seconded the motion which carried by roll call vote of 2-0-2. Messrs. Goddin and Lamson were absent from the January 2, 2007 meeting and abstained from the vote.

Recorded Vote on the Motion:

Aye: Knudson, Carr
Nay: None
Abstain: Goddin, Lamson
Absent: White

BZA Bylaws (Rules and Procedures)

In response to the recent Supreme Court decision that stated the 30 calendar day appeal period for BZA cases begins on the date the decision was rendered by the Board, Zoning Administrator Rhodes presented the revision that will bring the BZA Bylaws into compliance with the Code of Virginia. Mr. Rhodes noted that Section 21-99 of the Zoning Ordinance will also need to be amended to reflect this decision. He added that Assistant City Attorney Workman has reviewed the change.

Mrs. Knudson moved that the revised Bylaws be approved. Mr. Goddin seconded the motion which carried by roll call vote of 4-0.

Recorded Vote on the Motion:

Aye: Knudson, Carr, Goddin, Lamson

Nay: None

Absent: White

BZA on the Website

Mr. Rhodes reported that submitted BZA applications, supporting documentation and staff analysis will be online beginning with the April meeting.

There being no further business the meeting adjourned at 5:20 p.m.

Respectfully submitted,

David Lamson, Vice-Chairman
Board of Zoning Appeals